

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

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11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 September 29, 2023

17 10:30 AM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re Hearing Using Zoom for Government. (Doc# 3626)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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17 BY: AARON COLODNY

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1 UNITED STATES DEPARTMENT OF JUSTICE  
2 Attorneys for the U.S. Trustee  
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5

6 BY: SHARA CLAIRE CORNELL  
7

8 ALSO PRESENT TELEPHONICALLY:  
9

10 VICTOR UBIERNA DE LAS HERAS

11 OTIS DAVIS

12 JASON IOVINE

13 YOHANNES AFEWORK

14 ANDREA AMULIC

15 JASMINE ARMAND

16 JOHAN BRONGE

17 STUART S. BROWN

18 MARK BRUH

19 RICKIE CHANG

20 CHRISTOPHER J. COCO

21 THOMAS DIFIORE

22 SHARON DOW

23 SCOTT DUFFY

24 BEN EADES

25 FLORENCE FLANNIGAN

1 REBECCA GALLAGHER  
2 JASLEIGH GEARY  
3 BRADLEY GIARDIELLO  
4 MIRA HAQQANI  
5 SAMUEL P. HERSHEY  
6 MATTHEW KLEIN  
7 DEBORAH KOVSKY-APAP  
8 KEVIN M. MANUS  
9 BRIAN S. MASUMOTO  
10 KEITH NOYES  
11 JARNO OBERG  
12 RYAN CHEN  
13 MARK ROBINSON  
14 ANDREW RUDOLPH  
15 NOAH M. SCHOTTENSTEIN  
16 WILLIAM D. SCHROEDER  
17 MATTHEW W. SILVERMAN  
18 DAVID TURETSKY  
19 CAROLINE WARREN  
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21 KEITH WOFFORD  
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23 TANZILA ZOMO  
24 DEBORAH FRANKEL  
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1 UDAY GORREPATI  
2 PATRICK HOLOHAN  
3 MIKE LEGGE  
4 KAREN LEUNG

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1 P R O C E E D I N G S

2 CLERK: All right, starting the recording for the  
3 hearing on September 29th, 2023 at 10:30 a.m., calling Case  
4 Number 22-10964, Associates Networks, LLC. If there are any  
5 parties that are making an appearance this morning, please  
6 unmute your line and state your appearance for the record.

7 MS. CORNELL: Good morning, Deanna. You have  
8 Shara Cornell with the Office of the United States Trustee.  
9 I believe I'll be joined by my colleagues, Mark Bruh and  
10 Brian Masumoto.

11 CLERK: Okay, thank you.

12 MS. CORNELL: Thank you.

13 CLERK: Are there any other parties at this time  
14 that are making an appearance? If so, please unmute your  
15 line and state your appearance.

16 Okay, you can pause the recording for now.

17 All right, for the parties that have joined,  
18 please unmute your line one at a time, and state your  
19 appearance of the record if you're speaking this morning.

20 MR. PESCE: Good morning. This is Gregory Pesce,  
21 White and Case, on behalf of the official Committee of  
22 unsecured creditors. I'll be the speaker for today's  
23 meeting -- or today's hearing.

24 CLERK: Thank you. All right, are there any  
25 additional parties that are stating their appearance?

1 All right, you can pause the -- you can pause the  
2 recording for now, and all right, for the parties that have  
3 joined, if anyone is speaking on the record this morning,  
4 please state your appearance for the record.

5 MR. DAVIS: Otis Davis as pro se Creditor.

6 THE COURT: Okay, thank you. Mr. -- are you  
7 speaking? I know Shara Cornell is going to be, I believe,  
8 the point person (indiscernible).

9 UNIDENTIFIED MALE: Deanna, I plan not to, unless  
10 the Court wants to hear from me. Thank you.

11 THE COURT: Okay, thank you.

12 All right, are there any -- yes, Mr. Iovine?

13 MR. IOVINE: Yeah, just in case, Jason Iovine, pro  
14 se Creditor. I don't really know what the Court is about  
15 today, so I'm just making sure.

16 CLERK: Okay, thank you for stating your  
17 appearance.

18 And then, Judge, Gregory Pesce is going to be  
19 speaking on behalf of the committee.

20 THE COURT: Okay.

21 CLERK: All right, you can pause (indiscernible)  
22 for now. For the parties that have joined, is anyone  
23 speaking on the record this morning? Please use the various  
24 hand function. I will ask you to state your appearance one  
25 at a time.



1 All right. Chris, were you speaking this morning  
2 or were you just observing.

3 MR. KOENIG: Good morning, Deanna. This is Chris  
4 Koenig from Kirkland and Ellis on behalf of Celsius. I may  
5 be speaking this morning. I'm joined by my partner, Ross  
6 Kwasteniet. I don't know if he's dialed in quite yet, but  
7 he'll be on the line as well.

8 CLERK: Okay, I don't believe he has. No, I don't  
9 see him yet. Okay, thank you.

10 MR. KOENIG: Thank you.

11 CLERK: You're welcome.

12 Aaron, do you want to state your appearance for  
13 the record or are you just listening this morning?

14 MR. COLODNY: I will be listening, Deanna, but  
15 Aaron Colodny from White and Case on behalf of the official  
16 committee of unsecured Creditors. My partner, Greg Pesce,  
17 is on the line.

18 CLERK: Right, thank you.

19 And for the parties that have joined, if anyone is  
20 speaking on the record this morning, please use the raised-  
21 hand function in Zoom, and I will ask you to unmute and  
22 state your appearance for the record.

23 And once again, for the parties that have joined,  
24 if anyone is speaking on the record this morning, please use  
25 the raised-hand function in Zoom, and I will ask you to

1 unmute and state your appearance.

2 Yes, Ross?

3 MR. KWASTENIET: Yes, it's Ross Kwasteniet from  
4 Kirkland and Ellis for Celsius.

5 CLERK: And thank you.

6 MR. KWASTENIET: Thank you.

7 CLERK: All right, are we waiting on any other  
8 parties, or can we get started at 10:30? I know we have  
9 another minute, if anyone wants to chime in.

10 MR. PESCE: The Committee is ready to go whenever  
11 the Court is then -- I think it's the Debtors -- the -- I'm  
12 sorry, the Committee, the Debtors, and the US Trustee are  
13 probably the principal parties for today, (indiscernible).

14 CLERK: Right, okay.

15 MR. KWASTENIET: And the Debtors are ready  
16 whenever you are.

17 CLERK: Judge, do you want to start or do you want  
18 --

19 THE COURT: Yes, I do. All right, thank you very  
20 much. This is Judge Glenn. We're obviously here on  
21 Celsius, 22-10964. This is a hearing, urgent hearing,  
22 requested by the Committee. I'm obviously -- I'm in  
23 Washington, DC today. I'm not in the courthouse.

24 Mr. Pesce will be leading.

25 MR. PESCE: Yes, thank you, Your Honor. And can

1 you hear me all right?

2 THE COURT: Yes, I can.

3 MR. PESCE: Thank you. For the record, Gregory  
4 Pesce, White and Case, on behalf of the official Committee  
5 of unsecured Creditors. Thank you for making time for us  
6 this morning during your travels. The Committee is well  
7 aware that the Celsius matters will take up a significant  
8 portion of your and your staff's time over the coming weeks,  
9 and we are greatly appreciative for you making time for us.

10 As will be further detailed next week at the  
11 confirmation hearing, Celsius and its Creditors are on the  
12 precipice of a terrific outcome here to bring these cases to  
13 a conclusion, reorganize a crypto business, which has never  
14 been done before, and become a publicly listed company on  
15 NASDAQ while preserving litigation claims for those  
16 Creditors. That's an unprecedented outcome, and it's even  
17 more unprecedented when the voting results are taken into  
18 account. We have, as will be described further next week,  
19 nearly \$2.84 -- I'm sorry, \$2.824 billion of claims voted  
20 yes, including \$2.4 billion of earned claims that voted 98  
21 percent in favor of the plan.

22 That level of support is staggering, particularly  
23 in comparison to other crypto cases here. That outcome  
24 required hard work and creative lawyering, and lots of  
25 coordination by the Debtors, the Committee, and other

1 parties. But as far as the Committee was concerned, it  
2 required more. It required the Committee, as a fiduciary,  
3 to take stances that were frankly not very popular with our  
4 constituency at times and required the Committee to act in a  
5 completely transparent, open manner with its constituency,  
6 with the Court, and with the United States Trustee to ensure  
7 that all parties knew how the bankruptcy process worked,  
8 particularly the customers, to whom the bankruptcy process  
9 was quite foreign, and how it was expected to work.

10 As you might know, that transparency allowed us to  
11 conduct town halls on Twitter, solicit Creditor feedback on  
12 social media, and make ourselves available by phone, by  
13 email, and in person more often than not. That transparency  
14 and openness was necessary, but it was also not without a  
15 cost. As you may know, me and my family, several of my  
16 coworkers received credible death threats during the case.  
17 My partner, Mr. Wilfred, was on the receiving end of some  
18 truly vile, racist statements that have no place in our  
19 society.

20 The Committee members, their spouses, and even  
21 their former spouses received threatening and menacing  
22 messages that required them to look around corners, look  
23 through the peephole, and take other steps to ensure their  
24 safety. That commitment to open transparency was necessary  
25 in this case, and it led us to today's event, because that

1 transparency extended not just to our constituency, but it  
2 extended to the Office of the United States Trustee, where  
3 an issue has recently come up that we wanted to bring to the  
4 Court's attention.

5 As background, when the Committee was formed, a  
6 Swiss investment firm called Covario AG with a claim of over  
7 \$11 million was appointed to -- and that's dollarized,  
8 obviously -- was appointed to the Committee, and it  
9 designated an individual named Keith Noyes to represent its  
10 interest on the UCC.

11 Mr. Noyes is a resident in Switzerland and is also  
12 a Celsius Creditor in his own capacity. Since that time,  
13 Mr. Noyes has spent upwards of 20 hours a week, sometimes  
14 more, serving as one of the Committee -- to the Committee's  
15 most active members. He's come to hearings. He's met with  
16 key Creditors, and he's met with bidders, among other  
17 things.

18 In November of 2022, the Committee's counsel was  
19 informed by Mr. Noyes that his company, Covario AG, was  
20 facing financial distress, was seeking a buyer, and that  
21 absent a buyer, it may need to commence an insolvency  
22 proceeding. Following that information, we promptly  
23 informed the United States Trustee about the -- the  
24 potential insolvency of Covario.

25 In particular, we raised issues that we sought

1 guidance on. We expressed the view that if Covario were to  
2 resign, which might or might not be necessary in a Swiss  
3 insolvency proceeding, that Mr. Noyes would probably be an  
4 appropriate substitute, given his work to date for the UCC,  
5 his huge institutional knowledge, and his overall  
6 professional qualifications.

7 We also informed the US Trustee that Mr. Noyes had  
8 a claim in his own capacity. At that time, on November  
9 29th, we were told that Mr. Noyes should complete a UCC  
10 questionnaire. During December, we continued to monitor the  
11 situation and provide periodic updates to the United States  
12 Trustee. By the end of the month, it was clear Covario was  
13 filing for insolvency. It's my understanding that it did  
14 file a sealed insolvency proceeding on or about December  
15 20th, and that proceeding was publicly announced in the  
16 media on December 30th.

17 The day after the filing, we reached out again to  
18 the United States Trustee, in light of our prior  
19 conversations, and said we needed guidance on this matter.  
20 And we submitted the UCC questionnaire form like every  
21 creditor who wishes to serve on an official committee in  
22 this district must fill out. After that time and reliance  
23 on the Trustee's lack of a response, the Committee continued  
24 to act in the ordinary course without -- with Mr. Noyes as  
25 an active positive member of the Committee.

1 And thereafter, at no time until last night, and  
2 I'll come back to that in a moment, White and Case is not --  
3 White and Case nor any member of the Committee has met with  
4 or spoken with any person with Covario AG, including the  
5 insolvency administrator, other than Mr. Noyes.

6 After that time, we were made aware that the  
7 insolvency administrator was taking steps to change the  
8 mailing address and ensure that notices were sent, but  
9 again, that person never contacted White and Case, and I'm  
10 told by Mr. Noyes, did not contact him, either. We did not  
11 receive a formal resignation letter from Covario AG, and we  
12 haven't received any communication replacing Mr. Noyes as  
13 his representative on the Committee, and as clear from the  
14 docket, the Committee has not been reconstituted.

15 So as far as White and Case was concerned, and as  
16 a part of -- as we were -- to know Mr. Noyes was a member of  
17 the Committee. We -- this issue went on the backburner, in  
18 essence, until later -- until earlier this month -- at the  
19 beginning of this month. Just by way of background, it's  
20 not customary in my view representing a lot of committees  
21 for those committees to file Rule 2019 disclosures. In this  
22 case, going back to the transparency point, the Committee  
23 felt it was imperative to file a Rule 2019 disclosure so  
24 that our constituency could see that our Committee was  
25 broadly representative of its interests.

1           There were loan holders. There were earn holders.  
2           There were sell holders. There were people of all other  
3           different types of cryptocurrencies, and we thought that was  
4           important for our constituency to see. We filed that  
5           disclosure initially on September 28th, 2022, roughly two  
6           months after the case was filed, roughly a month after White  
7           and Case was retained.

8           Earlier this year, certain Creditors began to  
9           contact that Rule 2019 disclosure. In particular, some  
10          Creditors were focused on the holdings information of  
11          another member, our co-chair, Mr. Thomas DiFiore. When Mr.  
12          DiFiore filled out the information on that form, he included  
13          holdings on account of loans that had been liquidated prior  
14          to the petition date. He did that out of an abundance of  
15          caution, because at the time, it was not clear whether  
16          liquidated loans were going to be -- were in fact claims or  
17          what their status was for the bankruptcy, so in essence, he  
18          overstated some of his loan holdings by including claim --  
19          loans that had in fact been liquidated prior to the  
20          bankruptcy.

21          By that time, the summer, we had done a lot more  
22          thinking on the matter. We had obviously had a number of  
23          trials before Your Honor about what to do -- about how  
24          tokens were going to be treated here. We determined that it  
25          was important for the UCC to update its 2019 disclosure so



1 that our constituency could have full disclosure.  
2 Consistent with our efforts to keep the US Trustee apprised  
3 of updates in the case, we -- on September 5th, we contacted  
4 the US Trustee. My partner, Aaron Colodny, and I had a call  
5 to let the US Trustee know we wanted to file an updated  
6 form, but we were unsure how to deal with the Covario issue.

7 Covario, as I mentioned, had not resigned, nor has  
8 it given us information that Keith was not its rep -- Mr.  
9 Noyes, rather, was not its representative. But Mr. Noyes  
10 also did not have access to the books and records of Covario  
11 so that he could provide the information for that updated  
12 form. We asked the US Trustee for guidance on how to  
13 proceed, including whether it wanted to appoint Mr. Noyes as  
14 a member in his own right, as had been suggested at the end  
15 of 2022.

16 A week later, September 12th, we were told that  
17 the US Trustee "cannot make a decision -- cannot make any  
18 decision or perform any action without a formal  
19 resignation." In other words, the US Trustee took the  
20 position 17 days ago that Covario was still on the  
21 Committee. On September 20th, the US Trustee then sent us  
22 an email that was dialed as a request for information in  
23 lieu of formal discovery about the Covario situation and how  
24 Mr. Noyes and Covario acted on the Committee.

25 We provided all of that information on Saturday

1 night at 10:45 p.m., September 23rd. We described the  
2 circumstances that I summarized for Your Honor. We also  
3 noted for the United States Trustee that our Committee had  
4 been made aware of it and had ratified all actions to date  
5 that had been taken.

6 The next day, late morning, the United States  
7 Trustee filed the plan confirmation objection, and this  
8 wasn't mentioned. The US Trustee's silence on the issue  
9 earlier this year and then the more recent lack of a  
10 response was concerning to the Committee. Frankly, too much  
11 work has gone on into this process, and there's too much at  
12 stake to let this issue go unanswered. We wanted to update  
13 the Court about what has been going on here to provide this  
14 information to the Court.

15 One final point I just want to raise, actually two  
16 final points, after reaching out to chambers yesterday to  
17 request the status conference and then getting this hearing  
18 set, we found the contact information for the Covario  
19 insolvency administrator in Switzerland. It is a woman  
20 named Birgit Urbons. She emailed --

21 THE COURT: Do you think something's funny, Ms.  
22 Cornell?

23 Go ahead, Mr. Pesce.

24 MR. PESCE: Sorry. Sorry, after we reached out to  
25 the Court, just so I could provide full information today, I

1 reached out to Ms. Birgit Urbons, who's a liquidation  
2 administrator or their counsel in Switzerland, because I  
3 wanted to -- while we had been in contact before, I wanted  
4 to really check all the boxes here and understand what her  
5 perspective was on this situation.

6 Ms. Urbons informed me that while Covario is the -  
7 - recorded as the Creditor in name, the claim is  
8 beneficially directed and controlled by two other Creditors.  
9 I do not know their names. I asked Ms. Urbons to provide  
10 that information to me, and she did not provide me with the  
11 beneficial -- essentially the clients of Covario that  
12 control the claim. I asked her instead to forward my email  
13 to them and -- so they could contact me.

14 I also asked her whether -- what her position was  
15 on Covario being a member of the Committee. She said that  
16 she wasn't in a position to make a resignation or take any  
17 action, but it was her understanding that the other two  
18 members probably would prefer to remain as a Committee  
19 member. And then the second piece I'll just note is  
20 Covario, through Ms. Urbons, the administrator, has voted  
21 its claim, roughly \$11 million of exposure in favor of the  
22 plan. I did confirm this with Stretto, the solicitation  
23 agent, last night and this morning, voted yes, did not opt  
24 out of the releases.

25 So we wanted to bring this all to the Court's

1 attention, in light of the emails back and forth, and to  
2 avoid any question about what the Committee has done here.  
3 And with that, I thank the -- Your Honor for your time. I'm  
4 happy to address any questions or take any direction from  
5 the Court on how -- what you may think is appropriate for  
6 the Committee to do here or supplement what I've shared this  
7 morning, so thank you.

8 THE COURT: Thank you.

9 Let me hear from somebody for the Debtor first,  
10 and then I'll turn to Ms. Cornell.

11 MR. KWASTENIET: Thank you, Your Honor. It's Ross  
12 Kwasteniet from Kirkland and Ellis. From our perspective,  
13 our main concern is obviously the confirmation hearing next  
14 week. We've been working around the clock to try to resolve  
15 as many issues as possible. And you know, Committee  
16 composition, that's clearly, in the first instance, an issue  
17 as between the US Trustee and the UCC not -- our issue in  
18 the first instance.

19 We are concerned about the timing here and the  
20 potential for distraction at a critical juncture in the  
21 case. Our understanding is that this issue has been out  
22 there for many months. We've not been privy to the  
23 conversations between the UCC and the Office of the United  
24 States Trustee. This is a topic that we've discussed with  
25 the UCC's representatives from time to time, and then more

1 recently, with Ms. Cornell.

2 Our biggest concern, Your honor, again, just to  
3 state the obvious, is that we don't want this issue to turn  
4 into a distraction from the confirmation hearing, which is  
5 our sole focus.

6 THE COURT: Thank you, Mr. Kwasteniet.

7 Ms. Cornell?

8 MS. CORNELL: Thank you, Your Honor. Shara  
9 Cornell on behalf of the Office of the United States  
10 Trustee. I know that this issue is late in the game, but  
11 it's not our making.

12 THE COURT: Do you think so? You really think so,  
13 huh? Do you think that me hearing about it on Thursday  
14 night when I'm on a train to Washington before a Monday  
15 confirmation hearing is a little late in the game when  
16 you've known about it for a very long time?

17 MS. CORNELL: Your Honor, if I may, I'd like to  
18 explain a few things that are not only not clear from the  
19 email from Mr. Pesce today, but are, quite frankly,  
20 inaccurate and mischaracterize the truth of what happened.  
21 And I would -- if the Court is willing to indulge me, I do  
22 have some prepared remarks today.

23 THE COURT: Please, go ahead.

24 MS. CORNELL: Thank you, Your Honor. First, I'd  
25 like to get a few procedural issues out of the way. And

1 first, the way that these issues were brought before Your  
2 Honor are nothing short of an ex parte effort to put forth  
3 an inaccurate narrative. The Court --

4 THE COURT: This is not an ex parte hearing.

5 MS. CORNELL: I -- this is not, but the email to  
6 Your Honor that was received yesterday afternoon was, and  
7 that was not our intention. The United States Trustee does  
8 not support ex parte communications in this or in any case.  
9 Second, United States Trustee would like to make it very  
10 clear that it had every intention of bringing these issues  
11 before Your Honor as of last night, in fact. In fact,  
12 immediately prior to the ex parte communication from Mr.  
13 Pesce, the United States Trustee --

14 THE COURT: Stick with the substance. Would you  
15 please? I don't have the time to deal with --

16 MS. CORNELL: I understand that, Your Honor, but I  
17 would like to provide you with some context.

18 THE COURT: -- (indiscernible). Just get to the  
19 substance.

20 MS. CORNELL: The United States Trustee was on a  
21 lengthy phone call with the Debtors yesterday afternoon,  
22 specifically providing them in advance our intention and our  
23 intended vehicle for bringing these -- bringing forth these  
24 issues in order to prevent effecting confirmation. We  
25 specifically reached out for the purpose of preventing the

1 scenario that Mr. Pesce has described. No one at the United  
2 States Trustee's Office is trying to impact negatively the  
3 confirmation hearing. The UST is trying to deal with an  
4 issue that was brought to our attention in the past two  
5 weeks. We are in an information vacuum, Your Honor.

6 THE COURT: Can you just -- Ms. Cornell, Ms.  
7 Cornell, just get to the substance of your response.

8 MS. CORNELL: As to the -- as to the substance of  
9 what's going on, on -- in December of 2022, I believe it was  
10 December 21st, to be exact, immediately prior to the  
11 Christmas vacation, Committee counsel first reached out to  
12 our office via email and indicated that they thought in the  
13 future, not currently, in the future prospectively that one  
14 of the Committee members, Covario AG, may be declaring its  
15 own insolvency in its native Switzerland.

16 The conversation was framed entirely as  
17 prospective. No resignation was provided, nor was any  
18 reason provided why an insolvent entity could not sit on a  
19 committee. Instead, the Committee wanted our office to  
20 unilaterally, and without basis, to remove Covario and  
21 appoint its selective representative, Mr. Keith Noyes, in  
22 his personal capacity. At that point, there was no Creditor  
23 questionnaire received. It was not received by the deadline  
24 presented in this case, so we -- not -- so we did at that  
25 time request one just so we would better understand the

1 situation.

2 Again, counsel doesn't seem to understand why the  
3 request to replace a Committee member with their personal  
4 selection was not only unusual but inappropriate. Committee  
5 formation is solely at the discretion of the United States  
6 Trustee, and the Committee or counsel or really anyone is  
7 not permitted to tell us or ask us for an advisory opinion  
8 regarding the placement of a Committee member.

9 THE COURT: Ms. Cornell, I'm stopping you now.  
10 This is Friday afternoon before the Monday confirmation  
11 hearing. I'm in Washington, DC, and I should be in another  
12 meeting, but I am here. Get to the point and tell me what  
13 is the position of the US Trustee with respect to the  
14 membership on the Committee, with respect to Mr. Noyes.

15 MS. CORNELL: I'm sorry, Your Honor. I'm not  
16 clear with what you'd like to -- me to (indiscernible) --

17 THE COURT: I'd like to know what your position  
18 is. What's the position of the --

19 MS. CORNELL: My --

20 THE COURT: Stop. I want to know now what is your  
21 position with respect to Covario's spot on the Creditor's  
22 committee and Mr. Noyes's role. That's what I want to know.  
23 Leave out all of the history.

24 MS. CORNELL: I'm sorry, Your Honor. I was just  
25 responding to the history that was provided by Mr.



1 (indiscernible) --

2 THE COURT: I'm asking you a question. Are you  
3 going to answer it or not?

4 MS. CORNELL: The answer is, at this time, we have  
5 just learned as of a few days ago that the Committee has had  
6 no contact with Covario AG in the past nine months. We  
7 never received a formal resignation, so in our view, Covario  
8 AG should be removed from the Committee. However, before we  
9 were able to file the proper paperwork, we attempted to  
10 discuss it with the Debtors. And Mr. Pesce beat us to the  
11 punchline so to speak and did not allow us to bring forth  
12 this issue before Your Honor.

13 THE COURT: Did you hear what my question is? Did  
14 you?

15 MS. CORNELL: I did, Your Honor.

16 THE COURT: You haven't given me an answer to the  
17 question. This is Friday afternoon before the Monday  
18 confirmation hearing. Is Covario on the Committee? Off the  
19 Committee? Is Mr. Noyes on the Committee or off the  
20 Committee? That's what I want to know.

21 MS. CORNELL: Mr. -- Your Honor, it is our -- we  
22 have not filed the reformation paperwork yet, but it is our  
23 position that because Covario AG has not been in contact  
24 with the Committee, it should be removed from the Committee  
25 as a representative. Mr. Noyes is not an appropriate or a

1 substitute for Covario AG. They do not represent the same  
2 Creditor constituencies. They are not the same person.  
3 They are not the same entity. We have limited facts at this  
4 point to understand Mr. Noyes's participation. However, it  
5 is not the United States --

6 THE COURT: Just stop. Is your -- is the US  
7 Trustee's position that the Committee has one less entity on  
8 it? Covario is not -- you're going to remove Covario and  
9 you're not going to put Mr. Noyes on the Committee. Is that  
10 the answer?

11 MS. CORNELL: I believe that it's the current  
12 answer. Whether he will be replaced, I do not know at this  
13 time. I understand it's the Friday before confirmation, but  
14 we are dealing with an information vacuum with the limited  
15 facts that we do have to try to get to (indiscernible) --

16 THE COURT: When are you going to have an answer  
17 for me? It is now 10:50 on Friday afternoon with the  
18 confirmation hearing starting on Monday. I need an answer.  
19 The Committee needs an answer. The Debtor needs an answer.  
20 I find -- there may be a time when we have to review this  
21 whole history. It's not today. Do you have an answer for  
22 me?

23 MS. CORNELL: I don't have an answer that we're  
24 going to replace somebody as of right this minute. I don't  
25 have that. United States Trustee has not had an opportunity

1 to review the questionnaires and conduct the Creditor  
2 interviews.

3 THE COURT: What have you been waiting for? You  
4 have the -- you have Mr. Noyes's questionnaire. Are you  
5 telling me that the US Trustee has decided that it will not  
6 appoint Mr. Noyes as a member of the Committee on which he  
7 has served until now?

8 MS. CORNELL: Yes, Your Honor. He --

9 THE COURT: Is that a yes or --

10 MS. CORNELL: Yes, he will not be appointed to the  
11 Committee.

12 MS. CORNELL: Mr. Pesce, you have your answer.

13 MR. PESCE: Okay, thank you. We will -- I -- so  
14 just a few things. So obviously, it's the US Trustee's  
15 prerogative who to appoint. We're not trying to dictate it,  
16 but we will treat Covario and Mr. Noyes as not a member of  
17 the Committee, and yeah, I just want to make -- to avoid any  
18 issue here, this was set as a hearing. I tried following  
19 your chambers' rules about setting up a chambers conference.  
20 That's why I sent the email. I wasn't (indiscernible) --

21 THE COURT: I don't do chambers conferences, Mr.  
22 Pesce.

23 MR. PESCE: Okay.

24 THE COURT: We're having a hearing. It's on the  
25 record.

1 MR. PESCE: Understood.

2 THE COURT: From the Court's standpoint, on  
3 Friday, with Monday confirmation hearing, I need the  
4 clarity, and you need the clarity of knowing --

5 MR. PESCE: We do, too. We need the clarity.

6 THE COURT: -- who's on the Committee, who's not  
7 on the Committee.

8 MR. PESCE: So --

9 THE COURT: I assume that the US Trustee will  
10 promptly do the paperwork to remove Covario from the  
11 Committee.

12 MR. PESCE: We'll assume that as much in our  
13 deliberations over the next few days, so we appreciate at  
14 least that amount of clarity.

15 THE COURT: All right, so you indicated to me that  
16 the Committee, I take it, without Mr. Noyes has reaffirmed  
17 all of its decisions to date?

18 MR. PESCE: That's right. We had a meeting last  
19 week. We summarized -- or we gave them all of the decisions  
20 we've made to date. They ratified that with a resolution,  
21 and we told Ms. Cornell on this -- on Saturday night of that  
22 decision, so everything we've done to date in our view is  
23 still -- you know, it's ratified. We're not changing  
24 course. We just need clarity over who to invite to our  
25 meetings and confer with the head of next week's trial.

1 THE COURT: All right, is there anything else that  
2 we need to do today?

3 MR. PESCE: No. We thank you for your time, Your  
4 Honor, and we'll see you next week.

5 THE COURT: We're adjourned.

6 MR. PESCE: Thank you.

7 CLERK: You can stop the recording.

8 (Whereupon these proceedings were concluded at  
9 10:58 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: October 3, 2023

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